



# Physical Assault at Board Meetings Is the Condo Corporation Responsible?

By Denise Lash

In a recent case, *Omotayo v. Da Costa*, the Ontario Superior Court of Justice considered whether a condominium corporation was responsible to prevent an assault at a board meeting by one participant against another participant.



During a heated board meeting, Mr. Da Costa hit Ms. Omotayo on the head with a chair. Ms. Omotayo then sued both Mr. Da Costa and the condominium corporation for damages resulting from the assault.

The corporation acknowledged that at common law and under the *Occupiers' Liability Act*, it owes a duty to residents and visitors to ensure that the condominium property is safe and reasonably maintained. However, the corporation took the position that its duty did not include preventing an assault by a third party, as it was not reasonably foreseeable that one participant would physically assault another at the meeting. During the previous year, the board had met 30 to 40 times with no previous assaults or threats

of assaults having occurred. Although the meetings had become contentious, no one had conveyed to the board any concerns about safety or made any request that security be provided at the meetings.

The Court found that the duty of care owed by the corporation did not include preventing an assault at a board meeting as this was too remote a risk to be reasonably foreseeable, and the assault was a random and unexpected act of a third party.

*"It would be unduly onerous to find that a condominium corporation has a duty to provide security at every Board meeting to prevent a potential assault. Even given the contentious environment at the Board in this case, it would not be reasonable to require the condominium corporation to provide security. It is reasonable to expect that individuals who participate on the boards of condominiums corporations to adhere to a standard of conduct that includes, at a minimum, refraining from assaulting another participant."*

The Court granted the corporation's summary judgment motion to dismiss Ms. Omotayo's claim against the corporation. However, the legal proceedings against Mr.

Da Costa will proceed as the Court determined that the allegations against Mr. Da Costa relating to the assault are distinct and independent from the allegations against the corporation that it breached its duty to ensure Ms. Omotayo's safety.

While in this case the corporation was held not to be responsible for preventing an assault, condo corporations should not construe this decision to mean that they will be completely absolved from any liability should an assault occur on the condominium property. If there are any threats of physical assaults made against a Board member or if a Board member expresses concerns about his/her personal safety, the corporation must take these matters seriously. In these circumstances it would be best to consult the corporation's legal counsel to determine what measures should be taken. ■

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